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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/640,822	08/17/2000	Heinrich Gers-Barlag	Bci 637- KGB	6834

7590 03/13/2002
Norris McLaughlin & Marcus PA
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EXAMINER

WELLS, LAUREN Q

ART UNIT PAPER NUMBER

1617

DATE MAILED: 03/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application N . 09/640,822	Applicant(s) GERS-BARIAG ET AL.
Examiner Lauren Q Wells	Art Unit 1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 February 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires _____ months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

- 1. A Notice of Appeal was filed on 15 February 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
- 2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

- 3. Applicant's reply has overcome the following rejection(s): _____
- 4. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
- 6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- 7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-15.

Claim(s) withdrawn from consideration: none.

- 8. The proposed drawing correction filed on _____ is a) approved or b) disapproved by the Examiner.
- 9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 10. Other: _____

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Continuation of 5. does NOT place the application in condition for allowance because: a) the 103(a) rejection is maintained for reasons of record in the Office Action mailed October 4, 2001, Paper No. 9; b) Applicant's newly proposed claims 22, 24 and 25 raise new issues. For example, "stearylalkonium hectorite and quaternium-18 hectorite" as specific modified hectorites in claim 22 limits the scope of the invention; "amphiphilic metal oxides" as inorganic pigments in claim 24 further limits the scope of the invention; "titanium dioxide, zinc oxide, iron oxides or iron mixed oxides, silicone dioxide, or silicate" as specific amphiphilic metal oxides in claim 25 further limits the scope of the invention. Thus, the proposed amendment would require further search and consideration; c) Applicant argues "Msika et al., when stating that 'it will be possible to produce an emulsion of the water-in-oil type' teaches that there is an emulsifying system of between 4 and 35% by weight . . . one of ordinary skill in the art would not be directed toward the smaller amount of emulsifier used by the applicants and further still would not be directed toward producing emulsifier-free preparations". This argument is not persuasive. The Examiner respectfully directs Applicant to Col. 8, line 52-Col. 13, line 8 of Msika et al, specifically the Anhydrous Compact and the Sunblock Stick in Col. 12. The Examiner respectfully points out that Msika et al. exemplify compositions comprising emulsifiers and compositions comprising NO emulsifiers. Thus, Msika et al. meet Applicant's instant claim limitations regarding the amount of emulsifier; d) in regard to Applicant's comparison of Essential Elements, the Examiner respectfully directs Applicant back to the 103(a) rejection of record.


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